

BEFORE THE STATE ENGINEER OF OREGON

Grant County

IN THE MATTER OF THE APPLICATION)
OF JOHN CAWRSE FOR THE APPROVAL)
OF A CHANGE IN POINT OF DIVERSION)
OF WATER FROM JOHN DAY RIVER)
- - - - -

FINDINGS, CONCLUSIONS AND
ORDER
APPROVING APPLICATION

On July 18, 1961, John Cawrse of Mt. Vernon, Oregon, filed an application in the office of the State Engineer for approval of a change in point of diversion of water from John Day River, pursuant to the provisions of ORS 540.510 to 540.530.

Certificate of water right issued to Blue Mountain Ditch Company and recorded at page 24504, Volume 17, State Record of Water Right Certificates, confirms a right under Permit No. 3163 to the use of the waters of John Day River for the irrigation of, among other lands, 0.5 acre in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, 24.0 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, 37.8 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, 35.0 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, 28.3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, 36.6 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and 0.9 acre in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 26 and 28.1 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, 37.4 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, 36.9 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and 31.2 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 27, all in Township 13 South, Range 29 East, W. M., with a date of priority of October 23, 1916. These lands are irrigated through the Blue Mountain Ditch, the point of diversion of said ditch being located South 56 degrees East 3,570 feet from the northwest corner of Section 29, and being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, said Section 29, Township 13 South, Range 30 East, W.M.

The applicant herein, owner of the lands above described, proposes to irrigate said lands by means of an additional point of diversion to be located 530+ feet North and 500+ feet West from the southeast corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, and being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, Township 13 South, Range 29 East, W. M.

Notice of the filing of the application was given by publication setting forth a time and place for hearing objections to the proposed change in point of diversion of water, if any there were, namely: at the county

courthouse at Canyon City, Oregon, on September 27, 1961, at 9:30 o'clock a.m. The notice was published in the Blue Mountain Eagle, a newspaper printed and having general circulation in Grant County, Oregon, for a period of three weeks in the issues of August 3, 10 and 17, 1961. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

Protest of Kate Geisler, John Pereira, Wallace Campbell, Elmer Johnson, Charles Lowry, Mamie Bailey, Charlie Page and Don Ripa and Eddington Ditch Company against the approval of the application was filed on September 14, 1961.

The hearing was held by Chris L. Wheeler, Assistant State Engineer, at the time and place set. The applicant, John Cawrse, appeared represented by his attorney, Jack H. Dunn and the protestants appeared represented by their attorney, Roy Kilpatrick.

Based on the testimony presented at the hearing, the application for a change in point of diversion of water and the records on file in the office of the State Engineer pertaining to the water right involved herein, the State Engineer now makes the following Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

The Blue Mountain Ditch Company, a private corporation, owns and maintains the ditch from which John Cawrse, applicant herein, proposes to change his point of diversion during a portion of the irrigation season. According to the records of the State Engineer, the Blue Mountain ditch was completed in about 1919, is approximately eight miles long, and diverts water from the John Day River for the irrigation of 840.7 acres. From Mr. Cawrse's application and his testimony, it appears he is the owner of 296.7 acres of land irrigated from the ditch, or about 1/3 of the entire ditch right; that originally the land was irrigated by surface methods, but

since acquiring the property, he has constructed four pump stations from the ditch for sprinkler irrigation of his land; that the pump station and pipeline discharging into the Blue Mountain ditch above the four sprinkler pump stations as proposed in his application has been constructed; that it is his intention to utilize the ditch diversion early in the season and about July 1 of each year, when ditch loss is high and river flow low, to cease using the upper part of the ditch and start using the pump on the river; that the four pumps taking water from the ditch for sprinkling the land will operate the same in either case; and that the pump at the river is powered by a 50 horsepower electric motor and discharges into an 8 inch pipeline, approximately 2900 feet long to the ditch.

The general testimony of both sides was to the effect that the land along this section of the river is very porous, and a substantial part of the water applied through any ditch system of irrigation returns to the river immediately below. There are also very substantial transmission losses in the main ditches. The watermaster measured the Eddington Ditch at the diversion and about 500 feet below the diversion point on July 25, 1961, and found 30 miners inches (0.75 cubic foot per second) loss in the 500 feet. There are no records of losses on other ditches, but this is described as being typical of the area. In view of this condition and the lack of adequate distribution service, it has been the practice for each large ditch to bulldoze up a gravel dam in the river diverting essentially all of the flow into the ditch without any regard to priority or total quantity diverted. From the maps prepared in connection with the adjudication of the John Day River and its tributaries, the proposed point of diversion is located about 4.8 river miles downstream from the point of diversion of the Blue Mountain ditch and about one mile above the point of diversion at the Eddington ditch, protestants herein. All of the users of the Eddington ditch, the protestants

herein have a date of priority earlier than that of the Blue Mountain ditch, except Kate Geisler's rights under the Geisler extension as evidenced by Certificate recorded at page 21688, Volume 16, State Record of Water Right Certificates.

CONCLUSIONS

In the protest, two allegations are made requesting the denial of the application. Neither appears to be sufficiently well founded to justify denial of the application.

As a matter of law, ORS 540.030, there can be no injury to the existing rights of the protestants since they are prior in time and must be satisfied prior to any legal diversion by Mr. Cawrse, either at the Blue Mountain ditch diversion or at the proposed pump site. An administrative problem may be created, but this is not grounds under the statute for denying the application.

Protestants contend that the statute does not provide for changing diversion works to provide two points of diversion. There is no restriction that the change must be for all of a right, nor would such a restriction be reasonable. The change in diversion from one point to two points or from a ditch to a pumping plant does not, in itself, constitute an injury.

The proposed change can result in less waste of water. Most of the water lost in transmission in the ditch returns to the John Day River and is available for lower appropriators, yet some is lost through transpiration from undesirable brush and swamp growth lining the areas of heavy return. Beneficial use without waste is the governing principle behind all appropriations. Any change which can be made without injury to existing rights and that reduces waste of water should be encouraged.

It appears the change in point of diversion can be made without injury to existing rights. The right, as changed, should be conditioned upon adequate measuring devices being installed to insure distribution of

water in accordance with relative priorities and be limited to the amount of water available for distribution at the original point of diversion.

ORDER

NOW, THEREFORE, it hereby is ORDERED that the proposed change in point of diversion of water from John Day River, to-wit:

From a point located South 56 degrees East 3,570 feet from the northwest corner of Section 29, and being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, said Section 29, Township 13 South, Range 30 East, W.M.

To a point located 530+ feet North and 500+ feet West from the southeast corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, and being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, Township 13 South, Range 29 East, W.M.

for the irrigation of 296.7 acres hereinbefore described, beginning about July 1st of each year, with a date of priority of October 23, 1916, be and the same hereby is approved.

It is FURTHER ORDERED that no time need be fixed for completion of construction as the pumping plant has been installed and is in operation.

It is FURTHER ORDERED that the quantity of water diverted at the new point of diversion shall not exceed the quantity of water that is available at the old point of diversion, and the total quantity from both points of diversion shall not exceed 3.71 cubic feet per second, except in event of rotation.

It is FURTHER ORDERED that the following provisions shall be effective when in the judgment of the watermaster, it becomes necessary to install headgates and measuring devices:

That the pumping plant and related works shall include a weir or other suitable device for measuring the water to which the applicant is entitled.

That the plans of the weir or other suitable device be approved by the watermaster of Grant County, Oregon, before the beginning of construction work and that the weir or measuring device be installed under the general supervision of said watermaster.

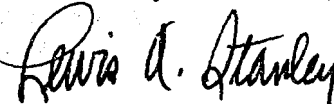
Dated at Salem, Oregon, this 13th day of December, 1961.

Notations made on Records

App. # 5224

Cent. # 24504

Trsf. "C-137"



LEWIS A. STANLEY
State Engineer